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FEB 14 2006

*Director's Office
Office of Patent Publication*

In re Application of
E SCOTT PRIESTLEY, et al.
Application No. 10/010,184
Filed: December 6, 2001
Attorney Docket No. PH-7087-A

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DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent and Trademark Office (USPTO) on January 24, 2006

The petition is **DISMISSED**.

The application was held abandoned for failure to timely pay the issue fee as required in the Notice of Allowance and Fee(s) Due mailed May 20, 2005, which set a three (3) month statutory period for reply. The Notice of Abandonment was mailed on November 11, 2005.

Petitioner states that:

The Issue Fee was paid on January 7, 2005

Applicant submitted an Amendment under § 312 on May 3, 2005, which was considered and entered by the Examiner

A Supplemental Notice of Allowance was mailed to the Applicant on May 20, 2005

The USPTO acknowledges receipt of Part B - Fee(s) Transmittal on January 7, 2005. As authorized, the Issue Fee of \$1,400, \$300 for the Publication fee, and \$30 for ten (10) Advance Order Copies were charged to Deposit Account No. 19-3880 on January 7, 2005.

However, a new Notice of Allowance and Fee(s) Due, with Part B – Fee(s) Transmittal were mailed on May 20, 2005.

The new Notice of Allowance clearly indicated in bold text:

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THE APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

Although no fee was due, as indicated on the form PTOL-85B, Part B – Fee(s) Transmittal mailed on May 20, 2005, the Applicant was required to return the form. Since the form was never returned the application was regarded as abandoned by operation of law on midnight August 22, 2005.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website <http://www.uspto.gov>)

- Under 37 CFR § 1.137(a), a petition for the revival of an *unavoidably* abandoned application
- Under 37 CFR § 1.137(b), a petition for the revival of an *unintentionally* abandoned application

Further correspondence with respect to the petition for revival under 37 CFR § 1.137 should be directed to the Office Of Petitions at 703-305-9282 or addressed as follows:

By mail: Mail Stop Petitions
 Commissioner For Patents
 Office of Petitions
 P. O. Box 1450
 Alexandria, VA 22313-1450

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Patent Publications at 703-308-9250.



Thomas Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publications